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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 41.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC. and ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

BRIEF FOR WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC. AND ALEXANDRIA, BARCROFT & WASHINGTON TRANSIT COMPANY, APPELLANTS.

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INDEX.

	Page
Opinion Below	1
Jurisdiction	2
The Issues Involved	2
Statement	2
Summary of Argument	6
Argument	7
1. The Interstate Commerce Commission is authorized to regulate the transportation of persons by motor vehicle between points and places in the District of Columbia and the Virginia Governmental installations here involved	7
2. The Capital Transit Company is a common carrier of passengers by motor vehicle in interstate commerce	11
3. The Capital Transit Company is not exempt from the jurisdiction of the Interstate Commerce Commission, under the provisions of Section 203 (b) (8) of Part 2 of the Interstate Commerce Act	13
(a) Section 203 (b) (8) of Part 2 of the Interstate Commerce Act clearly defines the interstate route here involved as a route between a point or place in one state and a point or place in another state	13
(b) The Capital Transit Company does not operate over an interstate route wholly within a municipality or between contiguous municipalities or within a zone adjacent to, or commercially a part of any such municipality or municipalities	13
4. The Interstate Commerce Commission acted properly in assuming jurisdiction of the involved transportation under the National Transportation Policy, declared in the Interstate Commerce Act	14

Page

5. The Interstate Commerce Commission has authority to prescribe the through route and joint fares here involved 15

6. The Interstate Commerce Act clearly confers jurisdiction in the Interstate Commerce Commission of common carriers by motor vehicle transporting passengers in interstate commerce wholly between points in a single state 17

7. The Interstate Commerce Commission's Orders of June 22, 1945 and July 7, 1948, do not purport to prescribe, or in any manner regulate, the fare for interstate transportation of passengers 18

Conclusion 19

Appendix 20

CITATIONS.

Cases:

B. & O. S.W.R. Co. v. Settle, 260 U.S. 166 ..... 8, 12
Buckingham Transportation Co. v. Black Hills Transportation Co., 281 N.W. 94 12
Houston, East and West Texas Ry. Co. v. United States, 234 U.S. 342 18
Sprout v. South Bend, 277 U.S. 163 12
Texas Pacific Ry. v. Interstate Commerce Commission, 162 U.S. 197 17
United States v. Capital Transit Co., 325 U.S. 357 ..... 3, 7, 14, 16, 17, 18
United States v. Yellow Cab Co., 332 U.S. 218 ..... 9, 10, 12, 18

Statutes:

Part 2 of the Interstate Commerce Act, 49 Stat. 543, 54 Stat. 899 20

Miscellaneous:

H. Rep. No. 1645, p. 4, 74th Cong., 1st Sess. 13

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OPINION BELOW

The trial-court's opinion in this case appears at page 252 the record, but the opinion is unreported. The findings fact and conclusions of law of the said court are set forth the record at pages 99 through 106. The Commission's ecision is reported at 270 I. C. C. 651 (R. 125).

JURISDICTION

The Court has jurisdiction of this cause under Sections 1253 and 2101(b) of Title 28 of U. S. C. A petition for appeal was presented and allowed February 3, 1949. (R. 337). Probable jurisdiction of this cause was noted on April 18, 1949. (R. 1276).

THE ISSUES INVOLVED

1. Whether the Interstate Commerce Commission has jurisdiction to establish through routes and joint fares, and divisions thereof, for the transportation of passengers by the Capital Transit Company and the Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia and Maryland Coach Company, Inc., between the District of Columbia and various governmental installations located at nearby points in Virginia.

The governing provisions of Part 2 of the Interstate Commerce Act (Motor Carrier Act), as amended, are set out in the Appendix, infra pp. 20-25.

STATEMENT

This case is before this Court on an appeal from a decree of a specially-constituted District Court which, by its decree entered on December 9, 1948, set aside and suspended orders of the Interstate Commerce Commission dated June 22, 1945, May 9, 1947 and July 7, 1948. (R. 321). The Order and Judgment by the specially-constituted three judge court decreed that, insofar as the aforesaid orders of the Interstate Commerce Commission related to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor, such orders are set aside, annulled, and permanently suspended; and the enforcement, execution and operation of the said orders, insofar as they relate to transportation by Capital Transit, and the fares therefor are permanently enjoined. The ef-

fectiveness of the injunction was stayed pending this appeal. (R. 319).

The interstate transportation in the case at bar is the self-same interstate transportation considered by this Court in *United States* v. *Capital Transit Co.*, 325 U. S. 357. The Interstate Commerce Commission issued an order on July 7, 1948, in its Docket No. 28991, amending the Commission's order of June 22, 1945, wherein the Commission had fixed the maximum joint fares for the transportation of passengers between the District of Columbia and certain nearby Governmental installations located in Virginia over through routes maintained by the Capital Transit Company and the Virginia lines.[1] (R. 125).

The Commission's order of June 22, 1945 was issued after this Court had upheld the Commission's authority to to prescribe such fares. *United States* v. *Capital Transit Co., supra.*

In its order of July 7, 1948 the Interstate Commerce Commission retained jurisdiction over the interstate transportation of persons between the District of Columbia and the Virginia Governmental installations via the joint facilities of Capital Transit and the Virginia lines; and fixed the divisions of the joint fares. (R. 125).

The history of the litigation, resulting in this Court's decision in *United States* v. *Capital Transit Co., supra,* an inseparable part of the case at bar, is as follows.

The Interstate Commerce Commission instituted an investigation at the requests of the Secretaries of War and Navy to determine the reasonableness and lawfulness of passenger fares between the District of Columbia and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Building at Gravelly Point and the Washington

[1] The Alexandria, Barcroft and Washington Transit Co., The Washington, Virginia and Maryland Coach Co., and the Arlington Fairfax Motor Transportation Co. The Latter Company was merged with the Washington, Virginia and Maryland Coach Co. in March, 1947, Washington, Va., & Md. Coach Co., Inc.—Control —Arlington, 45 M. C. C. 393.

National Airport, all located within the State of Virginia. The Capital Transit Company and the Virginia companies were named as respondents in that investigation. (R. 126).

The Virginia companies were authorized by the Interstate Commerce Commission to serve the Pentagon Building, the Navy Arlington Annex, the Army Air Force Building and the Washington National Airport, all in Virginia from and to the District of Columbia. The Capital Transit Co. held temporary authority granted to it by the Interstate Commerce Commission authorizing motor bus operations between the District of Columbia and the Pentagon Building only, in the state of Virginia. The remaining governmental installations in the State of Virginia were served by the Capital Transit Co. and the Virginia companies through joint arrangements. (R. 126, 127).

The Commission, on June 12, 1944, issued its report and order requiring, among other things, the establishment of joint fares between the Virginia carriers and the Capital Transit Co. (R. 11-12).

The Capital Transit Co. filed suit to set aside the Commission's order, and a specially-constituted three-judge court, in its opinion, held the order of the Commission of June 12, 1944 invalid. The decision of this specially-constituted court was taken on direct appeal to this Court. This Court's decision is reported in 325 U. S. 357, wherein the lower court's order was reversed and the Commission's authority was upheld to prescribe joint fares for passengers moving in interstate commerce between points and places in the District of Columbia and the Governmental installations.

Following this court's decision on May 28, 1945, the Interstate Commerce Commission issued an order making effective the maximum joint fares prescribed by the Commission's order of June 12, 1944. (R. 11).

The Virginia companies filed appropriate tariffs with the Interstate Commerce Commission to conform with the terms and conditions of the Commission's order of June

22, 1945; and the Capital Transit Co. concurred in those publications. The involved carriers operated under the maximum fares prescribed in the Commission's order of June 22, 1945, without interruption, until February 26, 1947, when Capital Transit served notice upon the Interstate Commerce Commission and the Virginia companies indicating Capital's desire to cease to participate in the through fares. (R. 16). This notice was rejected by the Commission, and Capital Transit again filed, on March 6, 1947, another notice seeking to revoke its participation in the tariffs in which through fares were published. (R. 16, 18).

On May 9, 1947, after hearing, the Interstate Commerce Commission, by its report and order of that date, reported at 47 M. C. C. 205, formally rejected for filing the notices submitted by Capital Transit Company to revoke its concurrences to the aforesaid tariffs. (R. 42).

In August, 1947, the Virginia companies petitioned the Interstate Commerce Commission to discontinue its proceeding in Docket No. 28991, and Capital Transit supported this action. While the petitions were denied, the Commission reopened the proceeding for further hearing. After further hearing, in which the Virginia lines, Capital Transit, the Public Utilities Commission of the District of Columbia, the Army and the Air Force participated, the Commission issued its order of July 7, 1948. This order, in part, fixed divisions of the joint fares between the Capital Transit Co. and the Virginia companies for the period between June 22, 1947 (after which date Capital Transit had claimed its full local rate as its share of the joint rate) and August 2, 1948, the effective date of amended tariffs issued by the Virginia company in accordance with the Commission's order of July 7, 1948. The Commission's order of July 7, 1948 also fixed the divisions of the increased joint fares between the carriers approved by the Commission after further hearing. (R. 140).

Thereafter, Capital Transit filed suit in the District Court of the District of Columbia seeking a permanent injunction and invalidation of the Commission's orders of July 7, 1948 and June 22, 1945. A specially-constituted District Court, on August 4, 1948, granted a preliminary injunction (R. 171), and on November 17, 1948, the specially-constituted three-judge court held that the Interstate Commerce Commission was without jurisdiction to make the orders hereinbefore noted. (R. 99).

SUMMARY OF ARGUMENT

1. The Interstate Commerce Commission is authorized to regulate the transportation of persons by motor vehicle between points and places in the District of Columbia and the Virginia Governmental installations here involved.

2. The Capital Transit Company is a common carrier of passengers by motor vehicle in interstate commerce.

3. The Capital Transit Company is not exempt from the jurisdiction of the Interstate Commerce Commission, under the provisions of Section 203 (b) (8) of Part 2 of the Interstate Commerce Act.

(1) Section 203 (b) (8) of Part II of the Interstate Commerce Act clearly defines the interstate route here involved as a route between a point or place in one state and a point or place in another state.

(2) The Capital Transit Company does not operate over an interstate route wholly within a municipality or between continuous municipalities or within a zone adjacent to, or commercially a part of any such municipality or municipalities.

4. The Interstate Commerce Commission acted properly in assuming jurisdiction of the involved transportation under the national transportation policy, declared in the Interstate Commerce Act.

5. The Interstate Commerce Commission has authority to prescribe the through route and joint fares here involved.

6. The Interstate Commerce Act clearly confers jurisdiction in the Interstate Commerce Commission of common carriers by motor vehicle transporting passengers in interstate commerce wholly between points in a single state.

7. The Interstate Commerce Commission's Orders of June 22, 1945 and July 7, 1948, do not purport to prescribe, or in any manner regulate, the fare for interstate transportation of passengers.

ARGUMENT

1. The Interstate Commerce Commission is Authorized to Regulate the Transportation of Persons by Motor Vehicle Between Points and Places in the District of Columbia and the Virginia Governmental Installations Here Involved.

The transportation of persons between their residences in the District of Columbia and their places of employment at the Pentagon Building, Navy Arlington Annex, Army Air Force Annex and the Washington National Airport, all within the State of Virginia, is "interstate commerce" subject to the jurisdiction of the Interstate Commerce Commission. This precise issue was decided by this Court in the Commission's favor in prior litigation between the parties. This Court in *U. S.* v. *Capital Transit Company*, 325 U. S. 357, at page 363 said:

> "As previously pointed out, twice a day more than 15,000 government employees traveled between the Virginia agencies and their homes via one of the four bus systems. Most of them either went to or from these bus terminals from or to their homes over any of Transit's then available buses or streetcars. Their travel was at certain hours each day, at which special rush hour buses and cars were made available for their

carriage. Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia-going bus at their place of work. On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District termini of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate. *Baltimore & Ohio S. W. R. Co.* v. *Settle*, 260 U. S. 166. And the fact that, except as to Transit, they paid a combination of two rates, one for travel wholly within the District, and the other for travel between the District and Virginia, and the journey from their residences to Virginia and back again was taken in two segments, does not mean that the total interstate trip was not on a "through route". *Virginia R. Co.* v. *United States*, 274 U. S. 658, 666-667; *St. Louis S. W. R. Co.* v. *United States*, 245 U. S. 136, 139-140."

The Interstate Commerce Commission, in its hearings culminating in its report of July 7, 1948, adhered to its original findings that many thousands of government employees continued to travel between the Virginia agencies and their homes within the District of Columbia in the same manner and using the same means of mass transportation as reported by this Court in its earlier decision in the *Capital Transit Case, supra*, (R. 132, 823-825, 831).

This court in the *Capital Transit* case recognized the existence of a through route between points in the District of Columbia and the government installations in the State of Virginia, which were jointly served by buses furnished in part by the Virginia lines; and, in part, by buses and street cars furnished by the Capital Transit Co. The Court's finding that this transportation was "interstate commerce" was reached with a complete understanding that Capital Transit vehicles did not at any time pyhsically

operate beyond the boundaries of the District of Columbia in providing services to the Navy Annex, Air Force Annex and the National Airport. As to these installations the decision of this court in the previous case, *United States and Capital Transit Co., supra,* is controlling.

Prior to April 1, 1947, the Pentagon Building, in addition to being served by the joint facilities of the Virginia lines and the Capital Transit Co., was also served directly by the Capital Transit Co.'s own buses. Since April 1, 1947, the Pentagon Building has been, and is being, served in "two segments"; in exactly the same manner as the other Virginia installations were previously and are being presently served. The decision of this Court in 325 U. S. 357 therefore is now the controlling precedent for the service between the Pentagon Building and points in the District of Columbia; since the service now rendered to the Pentagon Building in "two segments" does not differ in any manner from the service between the other governmental installations in the State of Virginia and points in the District of Columbia, which this Court held in its earlier decision to be "interstate commerce."

The District court based its decision denying jurisdiction to the Interstate Commerce Commission substantially upon the decision of the *United States* v. *Yellow Cab Co.*, 332 U. S. 218. Examination of that case clearly indicates that the lower court was in error.

The *Yellow Cab Co.* case involves a suit against certain taxicab companies operating locally in Chicago, Ill., to restrain alleged violations of the Sherman Anti-trust Act. One of the questions before the Court in that case was whether transportation by taxicab within the City of Chicago was in interstate commerce. The Court differentiated between two different kinds of transportation disclosed by the evidence. At pages 228-229 the Court said:

> "When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transporta-

tion by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. The *Daniel Ball*, 10. Wall, 557, 565. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. See *Stafford* v. *Wallace*, 258 U. S. 495."

The transportation here concerned is, in fact, as the Commission pointed out in its report, within the category described in the above quoted excerpt from the *Yellow Cab* case.

The Court in the *Yellow Cab* case clearly indicated in its decision that the taxicab trips in question were not interstate commerce because such trips had too "casual and incidental" a relationship to interstate transit. That this was the basis of the Court's decision in the *Yellow Cab* case may be further determined from the language in that case where the Court at page 231 said:

"Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. * * * From the standpoints of time and continuity, the taxicab trip may be quite distinct and separate from the interstate journey. To the taxicab driver, it is just another local fare."

And at page 233 the Court said:

"All that we hold there is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not prescribed by the Sherman Act. It follows that the complaint, insofar as it is based on such local taxicab service, fails to state a cause of action under the Sherman Act."

The facts and circumstances of the case at bar completely differ from those upon which the *Yellow Cab Company* case was decided. In the instant case, approximately 20,000 persons use the joint mass transportation facilities of the Capital Transit Co. and the Virginia lines in traveling to and from their homes in the District of Columbia and the Governmental installations in Virginia. The movement of passengers in mass transportation via the facilities of the Capital Transit Co. and the Virginia lines is the only means of mass transportation between the points and places here involved, and is distinguishable from the facts in the *Yellow Cab* case, wherein the said transportation was merely local in nature, and incidental to an interstate movement of passengers.

The *Yellow Cab* case should have no bearing on the case at bar for the further pertinent reason that taxicab service is expressly excluded from the operation of the Interstate Commerce Act by Section 203(b)(2) (49 U. S. C. 303 (b)(2), Appendix, infra, p. 20).

2. The Capital Transit Company is a Common Carrier of Passengers by Motor Vehicle in Interstate Commerce.

The Capital Transit Company has been issued Certificates of public convenience and necessity by the Interstate Commerce Commission authorizing transportation, in interstate or foreign commerce, as follows:

> "(1) In No. MC-75289, passengers and their baggage, and newspapers, in the same vehicles with passengers, over regular routes, between Washington, D. C., and College Park and Four Corners, Md., serving certain intermediate points, and, during the respective racing seasons, passengers, over regular routes, between Washington and race tracks at Bowie, Havre de Grace, Hagerstown, Laurel, and Timonium, Md., and the Pimlico Race Track at Baltimore, Md.; (2) in No. MC-75289 (Sub-No. 3), passengers and their baggage, over a regular route between Washington and Greenbelt, Md.; and (3) passengers, over a regular route,

during the racing season, between Washington and the race track at Bel Air, Md."

The determination of the character of the carriage of persons in interstate commerce depends upon the essential character of the movement. Where it is admitted that the movement made to the ultimate destination has at all times been contemplated, the failure to provide a continuous movement, without interruption, is without legal significance as bearing on the character of the traffic. *Sprout* v. *South Bend*, 277 U. S. 163, 168; *Baltimore & Ohio Southwestern Railroad Co.* v. *Settle*, 260 U. S. 166, (1922); *Buckingham Transportation Co.* v. *Black Hills Transportation Co.*, 281 N. W. 94 (1938).

The nature of the traffic involved in the instant case between points and places in the District of Columbia and the governmental installations in Virginia has been shown to be interstate in nature. *United States* v. *Capital Transit Co.*, 325 U. S. 357. The Capital Transit Company in transporting such passengers over any portion of the interstate routes, even though that portion so carried is wholly within the confines of the District of Columbia, is therefore engaged in the transportation of passengers in interstate commerce. This Court's decision in *United States* v. *Yellow Cab Company*, 332 U. S. at pp. 228-229 said:

> "When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in "character. * * * That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. * * * "

3. The Capital Transit Company is Not Exempt From the Jurisdiction of the Interstate Commerce Commission Under the Provisions of Section 203 (b) (8) of Part 2 of the Interstate Commerce Act.

Section 203(b)(8) of Part 2 of the Interstate Commerce Act excludes from the Commission's jurisdiction, except as to matters of safety and standards of equipment, the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities . . . ; and provided that the "motor carrier" engaged in such transportation of passengers . . . in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the "entire length of such interstate route".

The term "interstate commerce" is defined as meaning commerce between any place in a state and any place in another state, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express or water. The District of Columbia is considered a state for administration purposes under the provisions of the Interstate Commerce Act Sections 203(a)(8), infra, p. 20.

The legislative history of this exclusion reveals that only a "single-carrier" transportation facility was to be conditionally exempt.[1] Inasmuch as Capital Transit has never held concurrent authority from the regulatory commissions of the State of Virginia and the District of Columbia; and more importantly, in the case at bar, Capital Transit Company does not physically operate into the State of Virignia, it cannot be argued that Capital Transit is therefore lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction.

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[1] H. Rep. No. 1645, p. 4, 74th Cong. 1st Sess.

The Capital Transit Company has never operated over the entire length of the interstate routes between the District of Columbia and the Washington National Airport, the Air Force Annex and Navy Arlington Annex, all located within the State of Virginia. The transportation of persons in interstate commerce by the Capital Transit Company is not within the proviso of Section 203(b)(8).

4. The Interstate Commerce Commission Acted Properly in Assuming Jurisdiction of the Involved Transportation Under the National Transportation Policy, Declared in the Interstate Commerce Act.

Section 203(b)(8) of Part 2 of the Interstate Commerce Act, (Appendix, infra, p. 20), limits the Commission's jurisdiction over the transportation of passengers in interstate commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities. Other parts of the same section, however, authorize the Commission to apply the Act to these zonal activities, if it finds that such application is necessary to carry out the national transportation policy declared in the Act (i.e., the maintenance of a national transportation system "adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense").

This Court held in the *Capital Transit* case that where the Interstate Commerce Commission has found that the national transportation policy requires it to exercise its jurisdiction, the Commission has proper jurisdiction over such zonal transportation activities.

The Commission, at the further hearing, culminating in its report and order of July 7, 1948, found, as a matter of fact, that the Virginia establishments are still operated by

the Army, Navy, and Air Force, and employ approximately 20,000 persons; that a large number of these persons are dependent solely upon the facilities of the Capital Transit Company and the Virginia companies for essential transportation between their residences in the District of Columbia and their points of employment at the Virginia installations (R. 132).

The Report of July 7, 1948 further discloses that fares are an important factor in the continued employment of workers in the national defense agencies here involved (R. 823, 825-831).

In view of the foregoing, the Commission properly concluded to adhere to its original findings that its continued exercise of jurisdiction is required in order to carry out the policy of the Act; pointing out that "the national transportation policy contemplates a national transportation system that will, among other things meet the needs of national defense, and it applies in peacetime as well as in wartime". (270 I. C. C. at p. 657) (R. 132). The contention of Capital Transit Company that, in the absence of a shooting war, the Commission improperly exercised this jurisdiction, is without merit. The language of the Interstate Commerce Act setting forth the national transportation policy, in its phrase "national defense", is not limited in its application to war time activities solely. In fact, the national transportation policy was declared by Congress in peacetime, and is intended to be operative at all times, whether at peace or at war.

5. The Interstate Commerce Commission Has Authority to Prescribe the Through Route and Joint Fares Here Involved.

Section 216(a) of the Interstate Commerce Act requires each common carrier of passengers by motor vehicle to establish reasonable individual and joint fares for the transportation of passengers in interstate commerce; and the Commission may, upon its own initiative, establish

through routes and joint fares applicable to the transportation of passengers by common carriers by motor vehicle.

The Court, in *Capital Transit* case, expressly found that the movement of passengers between their places of residences within the District of Columbia to and from their places of employment at the Governmental installations within the State of Virginia was the movement of persons over a through route. The Commission properly established a joint fare.

The Interstate Commerce Commission in its order of July 7, 1948 again found that there is no regulatory authority, other than the Interstate Commerce Commission, delegated to enforce the establishment and observance of reasonable fares for persons traveling between the District of Columbia to the points and places in Virginia herein involved (R. 132). Whether the parties have voluntarily established a through route is not determinative of the Commission's authority to require the establishment of a through route and the publication of a joint fare. Capital Transit's contention that a through route does not exist in the case at bar wholly ignores the earlier decision of this Court in *United States* v. *Capital Transit Company, supra.* Here as in the former litigation, passengers continue to originate in the District of Columbia destined to their Virginia employment centers. There is a clear, certain, undeniable intent to travel over a direct route from a point within the District of Columbia to a Virginia installation, and return.

This Court in its prior decision, *United States* v. *Capital Transit Co., supra.*, pointed out that the fares there, as here, were interstate rates for interstate travel; and that neither the District of Columbia nor Virginia had power adequately to regulate the rates. 325 U. S. at Page 361-362.

Even though it may be that the intent of a passenger to travel interstate is not as reliable a criterion as that of a shipper with respect to freight, the knowledge of the carriers is a different consideration; and whereas here, the

carriers' passengers are being daily transported interstate between their homes in the District and their employment in Virginia, it is manifest that the carriers cannot escape either knowledge thereof or interstate regulation of the entire transportation between homes and places of employment.

It is not unusual that interstate rates for transportation, incorporating a portion of the route within a single state, differs from or is lower than the intrastate rate controlling between the same points. (cf. *Texas Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 217; *B. & O. S. W. R. Co.* v. *Settle*, 280 U. S. 166, 167).

6. The Interstate Commerce Act Clearly Confers Jurisdiction in the Interstate Commerce Commission of Common Carriers by Motor Vehicle Transporting Passenges in Interstate Commerce Wholly Between Points in a Single State.

Section 206(a) of Part 2 of the Interstate Commerce Act clearly establishes the Commission's jurisdiction over carriers by motor vehicle engaged in the transportation of passengers in interstate commerce solely within a single state. While this Section provides that any carrier, lawfully engaged in physical operations solely within a single state, shall not be required to obtain from the Commission a certificate of public convenience and necessity authorizing the transportation by such carrier of passengers in interstate or foreign commerce between places within such state, it further provides that such transportation shall, however, be otherwise subject to the jurisdiction of the Commission.

This Section, in conjunction with the essential interstate nature of the transportation here involved, as defined by this Court in 325 U. S. 357 and Section 216 of the Act, compels the conclusion that the joint fares ordered by the Interstate Commerce Commission follow within the authorized scope of the authority of the Commission. Any other

interpretation would render the proviso contained in Section 206 meaningless.

This Court's decision in the *Yellow Cab* case, 332 U. S. 218, is cited for the holding that Capital Transit is not engaged in interstate commerce when it transports persons between the District of Columbia and their Virginia Governmental installations over a portion of the interstate route. This argument was advanced and rejected in the *Capital Transit* case, 325 U. S. 357. This Court found that the character of the traffic between the District of Columbia and Virginia conclusively colored the daily journey as an interstate movement.

The inappositeness of the decision in *United States* v. *Yellow Cab Co., supra,* has been heretofore shown. (Brief, *infra,* pages 10, 11).

7. The Interstate Commerce Commission's Order of June 22, 1945 and July 7, 1948 do not Purport to Prescribe or in any Manner Regulate the Fare for Intrastate Transportation of Passengers.

The Shreveport Doctrine (*Houston, East & West Texas Ry. Co.* v. *United States,* 234 U. S. 342) was made inapplicable to intrastate motor transportation, which doctrine the Interstate Commerce Comission may have sought to apply to motor carrier transportation, by the proviso of Section 216(e) of Part 2 of the Interstate Commerce Act. The Shreveport Doctrine, subsequently enacted as a part of the Interstate Commerce Act, permitted the Interstate Commerce Commission, under certain facts, to regulate intrastate rail rates.

Here the Commission is making no attempt to regulate any of Capital Transit's intrastate operations, but rather only those operations which the Supreme Court has found to be essentially interstate in nature.

The fares here set aside were established by the Interstate Commerce Commission for interstate transportation. The Commission's orders plainly do not regulate intrastate

ares or apply the Shreveport Doctrine to them. The District Court, in holding that the transportation here involved was intrastate and within the meaning of the proviso of Section 216(e) of the Act erroneously concluded that the transportation was essentially "intrastate". It has been shown that such a conclusion is unsupported by the facts in this proceeding, where the regular movement of persons in continuous trips between their residences and employment are not disputed.

CONCLUSIONS.

For the foregoing reasons the Appellants pray that the decree of the District Court be reversed and the interlocutory injunction dissolved.

Respectfully submitted,

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September, 1949.

APPENDIX.

The pertinent provisions of Part 2 of the Interstate Commerce Act, 49 Stat. 543, as amended, are as follows:

SEC. 203 (a) (8) The term "State" means any of the several States and the District of Columbia.

SEC. 203 (a) (10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

SEC. 203(b) Nothing in this part, . . . shall be construed to include . . . (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; . . . nor unless and to the extent that the Commission should from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part . . . apply to (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; . . .

SEC. 206 (a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to

such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however*, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

SEC. 216 (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or

foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed

to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however*, That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor

vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by ~~order~~ prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or in equitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use

of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change or rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

The Act of September 18, 1940, 54 Stat. 899, amended the Interstate Commerce Act by inserting the following provision entitled "National Transportation Policy": "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."